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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 LUIS GUILLERMO LEYVA-MESA,  
12 Movant-Defendant,  
13 v.  
14 UNITED STATES OF AMERICA,  
15 Respondent-Plaintiff.

Civ. Case No. 11cv1731 BTM  
Crim. Case No. 11cr2231 BTM

**ORDER DENYING § 2255 MOTION**

16 Defendant Luis Guillermo Leyva-Mesa has filed a motion to reduce his sentence  
17 under 28 U.S.C. § 2255. For the reasons discussed below, Defendant's motion is **DENIED**.  
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19 **I. BACKGROUND**  
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21 On June 28, 2011, pursuant to a Plea Agreement, Defendant entered a plea of guilty  
22 to Count One of the Information (violating 8 U.S.C. § 1326(a) and (b)).

23 On July 19, 2011, Defendant was sentenced to a 10-month term of imprisonment and  
24 2 years of supervised release. Judgment was entered on July 26, 2011.

25 **II. DISCUSSION**  
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27 In his motion, Defendant argues that his sentence should be reduced because due  
28 to his status as a deportable alien, he is ineligible for certain programs and benefits that are  
available to United States citizens.

1 Defendant is barred from arguing for a reduction of his sentence under the terms of  
 2 the Plea Agreement. The Plea Agreement provided that the sentence was within the sole  
 3 discretion of the sentencing judge and that Defendant understood that the sentencing judge  
 4 may impose the maximum sentence provided by statute. (Plea Agreement ¶ 9.) Defendant  
 5 and the Government agreed that Defendant's Adjusted Offense Level was 8, but reached no  
 6 agreement on Criminal History Category. (Plea Agreement ¶¶ 4, 7. ) The parties agreed not  
 7 to recommend additional upward or downward departures, including sentence reductions  
 8 under 18 U.S.C. § 3553. (Plea Agreement ¶ 5.)

9 The Plea Agreement further provided: "In exchange for the Government's concessions  
 10 in this plea agreement, *defendant waives, to the full extent of the law, any right to appeal or*  
 11 *to collaterally attack the conviction and sentence . . . unless the Court imposes a custodial*  
 12 *sentence above the greater of the high end of the guideline range recommended by the*  
 13 *Government pursuant to this agreement at the time of sentencing or statutory mandatory*  
 14 *minimum if applicable. "* (Plea Agreement ¶ 11) (emphasis added).

15 The Government recommended a guideline range of 10 to 16 months based on the  
 16 Adjusted Offense Level of 8 and a Criminal History Category of IV. (Gov't Sentencing  
 17 Summary Chart (Doc. No. 16).) The Court sentenced Defendant to the low-end of the  
 18 guideline range - 10 months.

19 At the sentencing hearing, the Court confirmed that Defendant understood that he was  
 20 waiving his right to collateral attack:

21 **The Court:** Based upon the sentence and these proceedings, do you waive  
 22 your right to ever appeal and attack the sentence and conviction, Mr. Leyva?

23 **Defendant:** Yes, sir.

24 A waiver of appeal and/or collateral attack of a conviction is enforceable if voluntarily  
 25 made. United States v. Pruitt, 32 F.3d 431, 433 (9th Cir. 1994). If ineffective assistance of  
 26 counsel renders the plea agreement containing the waiver involuntary, the defendant may  
 27 appeal or collaterally attack his sentence. See Washington v. Lampert, 422 F.3d 864, 871  
 28 (9th Cir. 2005) (holding that "a plea agreement that waives the right to file a federal habeas

1 petition under 28 U.S.C. § 2254 is unenforceable with respect to an IAC claim that  
2 challenges the voluntariness of the waiver”). See also Pruitt, 32 F.3d at 433 (expressing  
3 “doubt” that such a waiver could be enforceable in a § 2255 context).

4 Defendant does not argue that his attorney was ineffective in advising him regarding  
5 the Plea Agreement or that his plea was otherwise involuntary. Accordingly, Defendant is  
6 bound by the terms of the Plea Agreement and is precluded from mounting a collateral attack  
7 on his sentence. Defendant’s motion is therefore denied.

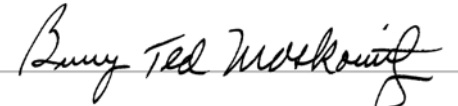
8 Finally, even if the Court were to consider his claim it would be denied. Had defense  
9 counsel sought a departure or sentence reduction on the grounds Defendant now suggests,  
10 the Court would have denied it as it has done numerous times.

### 11 12 **III. CONCLUSION**

13 For the reasons discussed above, Defendant’s motion to reduce sentence is **DENIED**.  
14 The Court **DENIES** a Certificate of Appealability. The Clerk shall enter judgment accordingly.

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16 **IT IS SO ORDERED.**

17 DATED: September 2, 2011

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20 Honorable Barry Ted Moskowitz  
21 United States District Judge  
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